

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CAMBRIDGE UNIVERSITY PRESS,
et al.,

Plaintiffs,

-vs.-

MARK P. BECKER, in his official
capacity as Georgia State University
President, *et al.*,

Defendants.

Civil Action No.
1:08-CV-1425-ODE

**DEFENDANTS' RESPONSE TO PLAINTIFFS' SUPPLEMENTAL LOCAL
RULE 56.1 STATEMENT OF FACTS IN SUPPORT OF THEIR MOTION
FOR SUMMARY JUDGMENT**

Defendants, pursuant to Local Rule 56.1B.(2), hereby respond to Plaintiffs' Supplemental Local Rule 56.1 Statement of Material Facts in Support of Their Motion for Summary Judgment.

Preliminary Statement

In opposition to the Plaintiffs motion for summary judgment, the Defendants (the "University Administrators") rely on the discovery in this case, and the following:

1. Declaration of Patricia Dixon, Ph.D;
2. Declaration of Jennifer Esposito, Ph.D.
3. Declaration of Jodi Kaufmann, Ph.D.
4. Declaration of Ann Kruger, Ph.D; and
5. Declaration of Marian Meyers, Ph.D.
6. Declaration of Laura Burtle (April 23, 2010)¹

Further, the University Administrators object to all statements of alleged material facts not in dispute to the extent they are based on activities or circumstances prior to adoption of the New Copyright Policy, including the Fair Use Checklist, in February of 2009. In addition, Plaintiffs have just recently identified many new works. See, for example, Paragraphs 270-279 herein. The Defendants object to the belated inclusion of such works, and to purported facts that are beyond the scope of the Amended Complaint or not produced during discovery. Plaintiff has not timely moved to amend any pleading in this case. Reference to, for example, new works after discovery has closed and after the Defendants have moved for summary judgment on the works at issue is prejudicial.

With reference to Plaintiffs' Supplemental Local Rule Statement of Material

¹ Defendants sometimes refer to these declarations by "Name Decl., ¶ ____."

Facts, the University Administrators respond to specific statements as follows.²

VII. GSU'S Unauthorized Distribution of Additional Plaintiff Works

270. During the Spring 2010 semester, Professor Youngs is providing digital copies of the 30-page second chapter of Naoko Shimazu's *Japanese Society at War: Death, Memory and the Russo-Japanese War* on ERes to students in his course "Historical Research" (HIST4990). *See* Def. Ex. C to SOF, Docket No. 160 at 139; Supplemental Responses and Objections to Defendants' First Set of Interrogatories to Plaintiffs ("Supp. Interrog. Resp.") No. 2.

RESPONSE:

270. Defendants object that the fact is not material since it does not concern any of the works at issue. Subject to their objection, Defendants admit that Professor Youngs has made available the stated work on ERes during the Spring 2010 semester, but Plaintiffs' cited evidence does not support that Professor Youngs has provided multiple copies.

271. Cambridge University Press is the exclusive licensee of the copyright to *Japanese Society at War*. Supplemental Declaration of Frank Smith, Cambridge University Press (April 2, 2010) ("Smith Supp. Decl.") ¶ 10. *Japanese Society at War* is a foreign work first published in the United Kingdom and therefore protected under the Berne Convention. *Id.* 11.

RESPONSE:

271. Defendants object that the fact is not material since it does not

² For the convenience of the Court, Defendants included live cites to the New Copyright Policy in their Opposition Brief submitted with their opposition to Plaintiffs' Original Statement of Facts. The New Copyright Policy and said citations are incorporated herein by reference.

concern any of the works at issue and to the extent the fact states a legal conclusion in violation of LR 56.1.B.(1). Subject to their objection and the fact that Defendants had no opportunity to conduct discovery related to the asserted fact, Defendants admit only that Cambridge University Press purports to be the exclusive licensee of said copyright.

272. During the Spring 2010 semester, Professor Kocela is providing students in “Don DeLillo” (ENGL8900) with digital copies of “DeLillo and masculinity,” by Ruth Helyer, and “DeLillo and mystery,” by John McClure, each of which are excerpts from *The Cambridge Companion to Don DeLillo*, by John Duvall (d.), on ERes. *See* Def. Ex. C to SOF, Docket No. 160 at 48; Supp. Interrog. Resp. No. 2.

RESPONSE:

272. Defendants object that the fact is not material since it does not concern any of the works at issue. Subject to their objection, Defendants admit that Professor Kocela has made available the stated work on ERes during the Spring 2010 semester, but Plaintiffs’ cited evidence does not support that Professor Kocela has provided multiple copies.

273. Cambridge University Press owns the copyright to *The Cambridge Companion to Don DeLillo* and all of the individual contributions that make up the different chapters of this work. Smith Supp. Decl. 115. *The Cambridge Companion to Don DeLillo* is a foreign work first published in the United Kingdom and therefore protected under the Berne Convention. *Id.* ¶7.

RESPONSE:

273. Defendants object that the fact is not material since it does not

concern any of the works at issue and to the extent the fact states a legal conclusion in violation of LR 56.1.B.(1). Subject to their objection and the fact that Defendants had no opportunity to conduct discovery related to the asserted fact, Defendants admit only that Cambridge University Press purports to be the exclusive licensee of said copyright.

274. During the Spring 2010 semester, Professor Hartley is providing digital copies of pages 155-184 of *Analyzing Oppression*, by Anne E. Cudd, on ERes to students in "Philosophical Perspectives on Women" (PHIL4860); that reading had been accessed 93 times as of February 18, 2010. *See* Def. Ex. C to SOF, Docket No. 160 at 39; Supp. Interrog. Resp. No. 2.

RESPONSE:

274. Defendants object that the fact is not material since it does not concern any of the works at issue. Subject to their objection, Defendants admit that Professor Hartley has made available the stated work on ERes during the Spring 2010 semester, but Plaintiffs' cited evidence does not support that Professor Hartley has provided multiple copies.

275. Oxford University Press is the exclusive licensee of the copyright to *Analyzing Oppression* and this work is registered with the U.S. Copyright Office. Supplemental Declaration of Niko Pfund, Oxford University Press (April 5, 2010) ("Pfund Supp. Decl.") ¶¶ 5-6.

RESPONSE:

275. Defendants object that the fact is not material since it does not concern any of the works at issue and to the extent that the fact states a legal

conclusion in violation of LR 56.1.B.(1). Subject to their objection and the fact that Defendants have had no opportunity to conduct discovery related to the asserted fact, Defendants admit only that Oxford University Press purports to be the exclusive licensee of said copyright.

276. During the Spring 2010 semester, Professor Umoja is providing digital copies of pages 15-41 of *The First Passage: Blacks in the Americas 1502-1617*, by Colin Palmer, on ERes to students in “Enslavement in the Americas” (AAS4620); that reading had been accessed 38 times as of February 18, 2010. *See* Def. Ex. C to SOF, Docket No. 160 at 119; Supp. Interrog. Resp. No. 2.

RESPONSE:

276. Defendants object that the fact is not material since it does not concern any of the works at issue. Subject to their objection, Defendants admit that Professor Umoja has made available the stated work on ERes during the Spring 2010 semester, but Plaintiffs’ cited evidence does not support that Professor Umoja has provided multiple copies.

277. Oxford University Press is the exclusive licensee of the copyright to *The First Passage* and this work is registered with the U.S. Copyright Office in the name of the author. Pfund Supp. Decl. ¶¶ 9-10.

RESPONSE:

277. Defendants object that the fact is not material since it does not concern any of the works at issue and to the extent that the fact states a legal conclusion in violation of LR 56.1.B.(1). Subject to their objection and the fact

that Defendants have had no opportunity to conduct discovery related to the asserted fact, Defendants admit only that Oxford University Press purports to be the exclusive licensee of said copyright.

278. During the Spring 2010 semester, Professor Harvey is providing students in Race, Class, and Gender (SOCI8900) with digital copies of “Black and White Professional-Managerial Women’s Perceptions of Racism and Sexism in the Workplace,” by Lynn Weber and Elizabeth S. Higginbotham, which is Chapter 7 of in *Women and Work: Exploring Race, Ethnicity and Class* (vol. 6), by Elizabeth S. Higginbotham and Mary Romero (eds.), on ERes. See Def. Ex. C to SOF, Docket No. 160 at 80; Supp. Interrog. Resp. No. 2.

RESPONSE:

278. Defendants object that the fact is not material since it does not concern any of the works at issue. Subject to their objection, Defendants admit that Professor Harvey has made available the stated work on ERes during the Spring 2010 semester, but Plaintiffs’ cited evidence does not support that Professor Harvey has provided multiple copies.

279. SAGE Publications is the exclusive licensee of the copyright to *Women and Work* as well as the contributions which make up the different chapters of this work. Supplemental Declaration of Sara Van Valkenburg, SAGE Publications (April 2, 2010) ¶¶ 5-6. *Women and Work* is registered with the U.S. Copyright Office in the name of SAGE. *Id.* 7.

RESPONSE:

279. Defendants object that the fact is not material since it does not concern any of the works at issue and to the extent that the fact states a legal

conclusion in violation of LR 56.1.B.(1). Subject to their objection and the fact that Defendants have had no opportunity to conduct discovery related to the asserted fact, Defendants admit only that SAGE Publications purports to be the exclusive licensee of said copyright.

Respectfully submitted this 26th day of April, 2010.

THURBERT E. BAKER
Georgia Bar No. 033887
Attorney General

R. O. LERER
Georgia Bar No. 446962
Deputy Attorney General

DENISE E. WHITING-PACK
Georgia Bar No. 558559
Senior Assistant Attorney General

MARY JO VOLKERT
Georgia Bar No. 728755
Assistant Attorney General
KING & SPALDING LLP

/s/ Katrina M. Quicker
Anthony B. Askew
Georgia Bar No. 025300
Special Assistant Attorney General
Stephen M. Schaetzl
Georgia Bar No. 628653
Katrina M. Quicker
Georgia Bar No. 590859
Kristen A. Swift
Georgia Bar No. 702536
Attorneys for Defendants

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to L.R. 5.1B and 7.1D of the Northern District of Georgia, that the foregoing Defendants' Motion for Summary Judgment complies with the font and point selections approved by the Court in L.R. 5.1B. The foregoing pleading was prepared on a computer using 14-point Times New Roman font.

/s/ Katrina M. Quicker

Katrina M. Quicker
(Ga. Bar No. 590859)

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the foregoing **DEFENDANTS' RESPONSE TO PLAINTIFFS' SUPPLEMENTAL LOCAL RULE 56.1 STATEMENT OF FACTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT** with the Clerk of Court using the *CM/ECF* filing system which will automatically send e-mail notification of such filing to the following attorneys of record:

This 26th day of April, 2010.

Edward B. Krugman
krugman@bmelaw.com
Georgia Bar No. 429927
Corey F. Hirokawa
hirokawa@bmelaw.com
Georgia Bar No. 357087
John H. Rains IV
Georgia Bar No. 556052

BONDURANT, MIXSON &
ELMORE, LLP
1201 West Peachtree Street NW
Suite 3900
Atlanta, GA 30309
Telephone: (404) 881-4100
Facsimile: (404) 881-4111

R. Bruce Rich
Randi Singer
Todd D. Larson

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

/s/ Katrina M. Quicker
Katrina M. Quicker
(Ga. Bar No. 590859)